



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, the interest and the filing fee for the claim.

The **tenant** attended the hearing. As the landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that **each** respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

**The** tenant testified the Application for Dispute Resolution and Notice of Hearing were sent to the landlord NT, by registered mail sent on April 1, 2014 and was returned unclaimed by the recipient.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord NT **has** been duly served in accordance with the Act

**The** tenant testified the Application for Dispute Resolution and Notice of Hearing were personally given to the landlord FT on March 31, 2014. I find that the landlord FT **has** been duly served in accordance with the Act

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The tenant paid a security deposit of \$1,200.00 at the start of the tenancy which began on May 1, 2012. The tenant vacated the premises on April 30, 2013.

The tenant testified that on April 30, 2013, at the move out condition inspection she provided the landlord with written notice of her forwarding address, as that address was written on the move out condition inspection report. The tenant stated the landlord did not provide her with a copy of the report.

The tenant testified that she has spoken with the landlords; however, they are refusing to return the security deposit as they alleged there were damages to the unit. The tenant stated she did not authorize the landlord to keep any portion of the security deposit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlords have breached of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest.

The landlords have breached section 38 of the Act. The landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlords are not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlords pay the tenant the sum of \$2,450.00 comprised of double the security deposit on the original amounts held (\$1,200.00), and the \$50.00 fee for filing this Application.

The tenant is given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 22, 2014

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Residential Tenancy Branch

